

No. 9(1) 81-8 Lab./5314.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. American Universal Electric (India) Ltd., Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 178 of 1978

*between*

SHRI MOHAN LAL, WORKMAN AND THE MANAGEMENT OF M/S. AMERICAN UNIVERSAL ELECTRIC (INDIA) LTD., FARIDABAD

Present.—

Shri Yoginder Singh, for the workman.

Shri R.N. Rai, for the management.

AWARD

By order No. ID/92-78/29666, dated 27th June, 1978, the Governor of Haryana referred the following dispute between the management of M/s. American Universal Electric (India) Ltd., Faridabad and its workman Shri Mohan Lal, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 16 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Mohan Lal was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference notices were issued to the parties. The parties appeared and filed their pleadings on the pleadings of the parties, following issues were framed on 2nd March, 1979:—

- (1) Whether the workman has left the services of the management of his own ?
- (2) Whether the dispute is not covered under section 2(a) of the Industrial Disputes Act ?
- (3) Whether the termination of services of the workman was justified and in order ?
- (4) If not, to what relief is he entitled ?

And the case was fixed for the evidence of the management who examined Shri Ramesh Uppal as MW-1 and Shri M.S. Hooda as MW-2 and closed their case. Then the case was fixed for the evidence of the workman, who examined himself as WW-1, Shri Ram Samaharao as WW-2 and Shri Ram Briksh as WW-3 and closed their case. Arguments were heard. I now give my finding issueswise:—

Issue No. 1.—MW-1 stated that he knew the concerned workman. He had reached on 15th September, 1977 on transfer and worked under the witness there. The workman remained there up to 28th September, 1977. Thereafter his whereabouts were not known and a telegram was sent to the Faridabad factory on 3rd October, 1977. Phonogram copy was Ex. M-1. Ex. M-2 was copy of the transfer order received by him from Faridabad factory. Original of Ex. M-3 was received by him at Ahmedabad without any covering letter and the same was forwarded to head office at Faridabad. By that time services

of the workman had already been terminated. Copy of termination letter was Ex. M-4. Its original was sent to the workman. A copy of it was also received by the witness at Ahmedabad. Except the original of Ex. M-3 no other paper what so ever was received from the workman to him. In cross examination he stated that on 29th September, 1977 whereabouts of the workman were not known to him. He had reached Ahmedabad on 14th September, 1977 and that night he stayed with him and after that with Shri J.C. Darban as far as it was known to him. He had asked Shri Darban to arrange lodging for the workman. He waited for the workman up to 3rd October, 1977 and then sent a telegram. MW-2 stated that he was the Factory Manager at the relevant period. He used to transfer and appoint workers. He knew the workman. He had ordered his transfer to Ahmedabad, —*vide* Ex. M-2. He worked there for about 13-14 days in the month of September, 1977. A telegrame was received on 3rd October, 1977 from Branch Manager about non- availability of the workman on 29th September, 1977. Photo copy of telegram was Ex. M-1. He further stated that he waited for one week for an information about the workman. Then he sent a letter to him on 11th October, 1977 copy Ex. M-4. The workman met him on 14th October, 1977 and was informed that his name had been struck off. Even at that time he did not submit any application or medical certificate. Certified Standing Orders copy Ex. M-4 were applicable to the factory. Medioal certificate copy Ex. M-3 was received from the workman thereafter. Letter copy Ex. M-6 was also received. In cross-examination he stated that there was a provision in the appointment letter about transfer of workman from one place to another place within the country. A workman was transferred on the recommendation of his head of the department. There were about 50 workmen in his department. He denied the suggestion that the trade union had raised objections in the said transfer. He also denied the suggestion that some other workman had volunteered for the said transfer because the concerned workman had a family and could not proceed on transfer. He further stated that the concerned workman had not objected to the transfer. After receipt of Ex. M-1 a letter was sent to the workman and his name was removed from rolls on 11th October, 1977. No action as taken on Ex. M-6.

WW-1 stated that he was transferred to Ahmedabad. He worked there. Shri Ram Briksh was willing to go to Ahmedabad in his place. He was not given any accommodation there and was told to find a place at the Railway Platform. He stayed for the night near the house of the Manager of the factory. Then he fell ill. He was treated by the Doctor. Medical and fitness certificate were Ex. W-2 to W-5. He further stated that he presented these medical certificates to Shri Uppal at Ahmedabad. He did not receive the same. It was sent by post, postal receipt was Ex. W-1. The Manager asked him to go to Faridabad as there was no work for him, therefore, he came back to Faridabad. Shri Hooda told him that he could not be taken back on duty because his name had been struck off. In cross examination he denied the suggestion that he was sent to Ahmedabad for a period of three months. He admitted that he was paid extra allowance by the company for his lodging at Ahmedabad. He admitted that he reached Ahmedabad on 14th September, 1977 and was kept by the Manager in the office premises on that date. There were also other 2-3 persons who were employees of the factory. He also admitted that after stay of one night in the office he stated with Shri J.C. Darban. He denied that he absented himself after 28th September, 1977. He stated that he belongs to village Salpur, district Sultanpur. He did not know the management sent him letter Ex. M-7 from Faridabad. He admitted that he sent Ex. M-3 from his village. He also admitted that he did not come to Faridabad after his transfer when Ex. M-3 was sent from his village. He had informed Shri Ram Sumha driver of the company that he had fallen sick in his village and he should inform Shri Uppal and Shri Hooda regarding his illness. He had signed Ex. M-6 but the same was written by Shri Ram Sumhar. Postal receipt Ex. W-1 was from Faridabad. He admitted it as correct that no letter was sent to the management about the refusal of medical certificate by Shri Uppal. He admitted it correct that he sent Ex. W-4 from his village to Shri Ram Sumhar. He denied the suggestion that he was at Faridabad and not in his village at that time. He met Shri Hooda in the month of December when he was told that his name had been removed. WW-2 stated that he worked in

the factory up to 1978. He was General Secretary of the union. The concerned workman was transferred to Ahmedabad. Letters copy Ex. W-6 and W-7 were sent to the management by him as General Secretary. He had received one letter from the concerned workman in which it was stated that another letter had been sent to him by Shri Hooda. He enquired about that letter which Shri Hooda refused. He informed the workman concerned after which he received two letters from him from Sultanpur about his illness which were given by him to Shri Hooda and requested him to sanction leave of the concerned workman but he was told that it will be sanctioned by Shri Uppal. In cross-examination he denied the suggestion that he was appearing as a witness because his services had been terminated by the management. He further stated that he gave copy letter Ex. M-6 and M-7 to the management and no other letter was given by him. WW-3 stated that the concerned workman was transferred because he annoyed Shri Menon his supervisor. He was ready to go to Ahmedabad in the place of the concerned workman who had some domestic reasons for not going to Ahmedabad. The management declined his request. In cross-examination he admitted that he was no longer in the employment of the management but he denied the suggestion that he was deposing falsely on that ground.

I find from the claim statement para 2 of the workman that he was not allowed to join duty at Ahmedabad and there he fell ill. The same is the position taken by him in the demand notice. He fell ill there and on the advice of the Doctor he went to his village. When came back after recovery with fitness certificate the Ahmedabad office told him that there was no work for him in that office is the stand taken by the workman in his demand notice. In the statement as WW-1 he has completely changed the version and stated that he joined at Ahmedabad office and stayed in the office with other workers for the night and then with Shri J.C. Darban. In this way he has corroborated the version of the management and demolished his own story given in the demand notice and claim statement. The absence from office is an admitted fact but the workman stated that his absence was due to illness. He has produced certificates Ex. W-2 to W-4. Ex. W-2 and W-8 are dated 30th September, 1977 because of illness being Malaria Debility. Ex. M-4 is the fitness certificate and is dated 5th December, 1977. Another fitness certificate is dated 2nd December, 1977 from Jagdishpur, district Sultanpur. The workman admitted having sent only Ex. M-6 which is dated 22nd November, 1977. It was sent by postal receipt Ex. W-1 which is from Faridabad and dated 20th November, 1977 in which the workman had written to Ahmedabad office that he could not perform his duty due to illness in which he has also mentioned that he had gone to his home due to receipt of a telegram. He has also requested for sanction of leave from 30th September 1977. The evidence of WW-2 and WW-3 is to the effect that the workman was not willing to go to Ahmedabad creates doubt on the version of the concerned workman that his absence was due to illness. According to clause 15(c) of the Certified Standing Orders Ex. M-5 the name will be struck off for a continuous absence of 10 days. In 1967 (15) F.R. Page 259 it is held as under:—

'Where a standing order provides that a workman would lose his lien on his appointment, if he does not join his duty within certain time after his leave expires, it can only mean that his service stands automatically terminated when the contingency happens.'

The contention of the learned representative for the workman that the workman was prevented by illness from his duty has no force because the workman according to Ex. M-6 stated that firstly he was sick then he went to his home on receipt of a telegram. Ex. M-6 was written after a lapse of about two months when he left his duty at Ahmedabad. It also shows that he did not apply earlier for leave because he made a request for leave from 30th September, 1977 onwards in this documents. Under the circumstances, this issue is decided in favour of the management.

**Issues No. 2 to 4.** —As issue No. 1 has been decided in favour of the management hence these issues needs no decision.

While answering the reference I give my award that the management did not terminate the services of the workman rather on the other hand the workman left the services of the management of his own. The workman is not entitled to any relief in this reference.

Dated the 28th April, 1981.

M. C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal, Haryana, Pardabab.

No. 411, dated 30th April, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,  
Presiding Officer, Industrial Tribunal,  
Haryana, Pardabab

No. 9(1)81-8 Lab/5477.—In pursuance of the provision if section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect the dispute between the workmen and the management of M/s Karnal Co-op. Sugar Mills, Karnal.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

References Nos. 198, 199, 209, 213 and 215 all of 1978

*between* !

SARVSHRI HAWA SINGH, MEER SINGH, MAHAVIR SINGH, JAI SINGH AND BABU RAM, WORKMEN AND THE MANAGEMENT OF M/S THE KARNAL COOP., SUGAR MILLS LTD., KARNAL

Present.—Shri Madhu Sudan, for the workmen.

Shri Surinder Kaushal, for the management.

### AWARD

These references have been referred to this court by the Hon'ble Governor,—*vide* his orders Nos. ID/KNL/1978/34457, dated 21st July, 1978, ID/KNL/1978, dated 21st July, 1978 ID/KNL/1978/34530, dated 24th July, 1978, ID/KNL/ 1978/34584, dated 24th July, 1978 and ID/KNL/1978/34601, dated 24th July, 1978 under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between the workmen Sarvshri Hawa Singh, Meer Singh, Mahavir Singh, Jai Singh, Babu Ram and the management of M/s The Karnal Coop. Sugar Mills Ltd., Karnal. The term of the references was being the same i.e—

Whether the termination of services, of the workmen was justified and in order ?  
If not, to what relief are they entitled ?

On the receipt of the order of reference notices as usual were sent to the parties who put in their appearance in response to the same, filed their respective pleadings and the following issues were framed on the basis of their pleadings :—

1. Whether the espousal by substance number of workmen is necessary ?  
If not, to what effect ?

2. Whether this court has no jurisdiction to decide the dispute ?

3. As per reference ?

My learned predecessor ordered to consolidate these references as all these involved the common question of law and fact. Evidence and further proceeding were to be recorded in reference No. 198 of 1978 of which was to be read in all these cases. By this award I dispose of all these references. The management examined Shri B.S. Bhatia, Assistant Accounts Officer as their sole witness and closed their case. The workmen themselves, were examined as their witnesses.

I heard the learned representatives of the parties and have also seen the record. I decide the issuewise as under :—

**Issue No. 1.**—The management did not lead any evidence on this issue and during the course of arguments the management representative in clear terms stated that he does not press for this issue. On the other hand the workmen representative argued that after the introduction of section 2(A) of the I.D Act an individual can raise the industrial dispute in respect of his dismissal, termination etc. without the support of the union or a substantial number of co-workmen. Under these circumstances I agreeing with the contention of the workmen representative decide this issue against the management.

**Issue No. 2.**—The management did not lead any evidence on this issue also nor they pressed on this issue during the course of arguments. Rather the management representative categorically stated that he gives up this issue. The same is therefore decide against the management.

**Issue No. 3.**—The case of the management is that a meeting of the Managing Directors of Sugar Mills was held on 2nd September, 1977 under the chairmanship of Chief Minister, Haryana wherein it was decided along with other things that there was over staffing in the factories much in excess of requirements and there was room for cutting down the strength of the staff and screening of the staff should also be made so as to weed out inexperienced, incompetent and undesirable persons. Screening Committee was formed and on receipt of recommendation from the screening committee the meeting of the Board of Directors was held on 14th October, 1977 to consider and approve the recommendations of the staff screening committee. Ex. MW-1/B was the copy of the proceedings. Post weight bridge coolie was abolished on which Shri Hawa Singh was working and there were two daftraries and it was decide that only one daftry was sufficient thereby resulting in the termination of Shri Meer Singh who was junior. The post of store boy was also abolished and the service of Shri Mahabir Singh were terminated alongwith other store boy. The posts of Garden Supervisor and Labour Supervisor were also abolished in consequences terminating the services of Shri Jai Singh and Shri Babu Ram respectively. All the workmen were given notices of termination and were paid the notice pay along with the retrenchment compensation who so ever was eligible to receive the same. The reduction in the staff was made in order to effect economy as the management experienced heavy losses during the first season which is clear from the balance sheet Ex. MW-1/D.

The workmen have also admitted the receipt of notices of termination as well as the retrenchment compensation but the workmen have stated that they had not been served with notices under section 9(A) of the I.D Act for effecting changes in conditions of their services which fact has also been admitted by the management witness in his cross examination. The balance sheet Ex. MW-1/D and the decision taken in the meeting of the Managing Directors which is Ex. MW-1/A and the decision taken in the meeting of the Board of Directors copy Ex. MW-1/B and the admission of the workmen regarding the receipt of notice and retrenchment compensation oes to justify the action taken by the management and proves the bonafides the management but the management has not been able to

fulfil the mandatory provision of section 9(A) of the I.D. Act, 1947 which is reproduced as under :—

No employer ; who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—

- (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of nature of the change proposed to be affected ; or
- (b) within twenty-one days of giving such notice.!

Notice under section 9(A) is a must when conditions of service are to be changed in order to bring about Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen. Rationalisation further cannots in relation to an industry "to organise so as to achieve greater efficiency and economy". The management has undoubtedly effected such changes in order to achieve better results with less staff. The non observance of the provisions contained in section 9(A) has rendered the order of retrenchment/termination improper and as such illegal, but for this, action of the management would have been perfectly justified and legal both. The awarding of full backwages to the workmen under these circumstances when the management has acted in a bonafide manner and according to them after observing all the legal formalities would be unjust. This is a legal lacuna which went unobserved by the management and for this lapse on their part the reinstatement of the workmen will be a just and proper penalty to the management for not complying with the provision of section 9(A) of the I.D. Act. I therefore direct the management to reinstate the workmen namely S/Shri Hawa Singh, Meer Singh, Mahabir Singh, Jain Singh and Babu Ram with continuity of services but without back wages on the basis of my above findings. Before awarding the relief of back wages it is always advisable to enquire into the fact whether the workmen had tried their level best but were not able to secure any employment. In the instance case all the workmen have stated that they did not try to find out any job during the period of unemployment with the fear that they will lose their back wages if they happened to work somewhere gainfully.

The references are answered and returned into these terms. It is further ordered that copy of this award may also be placed on each of the file in reference No. 199, 209, 213 and 215 all of 1978. No. order as to cost.

BANWARI LAL DALAL,

Presiding Officer,

Dated 28th April, 1981.

Labour Court, Haryana, Rohtak.

Endst. No. 1464, dated 6th May, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak